IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.181 OF 1998

Mahadeo Lalji Shet & Ors. ...Appellants

Vs.

Vishnudas Panachand Shet ...Respondent

Mr.R.S.Apte for the Appellants
Mr.C.G.Gavnekar for the Respondent.

CORAM: A.S.OKA, J.

DATED: FEBRUARY 3,2005.

P.C.:

1. Heard Counsel appearing for the parties. The Appeal is by the original Defendants. The challenge is to the decree for removal of encroachment passed by the Trial Court and confirmed by the District Court. The decree is in respect of a very small portion admeasuring 1/2 metre x 1 1/2 metre.

2. Shri Apte, learned Counsel for the Appellants submitted that there was no compliance with the provisions of Order VII Rule 3 of Code of Civil Procedure, 1908 and the map Exh.41 does not establish the fact of encroachment.

3. I have considered the submissions. In so far as the evidence of Surveyor is concerned, the Courts below have considered the evidence of the Surveyor who has prepared the

map at Exh.41. The Surveyor has described the method used by him for carrying out the survey. The finding of the Appellate Court is that there was no challenge in the cross examination to the method adopted by the Surveyor for carrying out the survey.

4. The extent and the location of the encroachment is very apparent from the plan at Exh.41. Considering all these factors the Courts below have recorded a concurrent finding of fact that the Appellants have committed an act of encroachment.

5. At this stage, Shri Apte submitted that the Appellants have constructed a staircase in the alleged encroached portion and it may take some time to remove the encroachment. Without prejudice to earlier contention, he submits that in case this Court is inclined to dismiss the Appeal, sufficient time may be granted. While opposing the said request Shri Gavnekar admitted that decree is not yet executed.

6. There is no merit in the Second Appeal. Second Appeal is dismissed with no order as to costs. The decree for removal of encroachment shall not be executed till 30th June 2005.

7. Parties to act upon an authenticated copy of this order.

Judge.